UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

LUIS JAVIER MENDOZA-ORDONEZ,
Petitioner

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: CASE NO. 1:16-CV-1777

CRAIG A. LOWE, *et al.*, Respondents

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ORDER

AND NOW, this 26th day of July, 2017, upon consideration of Magistrate Judge Karoline Mehalchick's thorough and well-reasoned Report and Recommendation (Doc. 22), and the parties' objections (Docs. 23 & 25) thereto, and, upon independent review of the record, and in accord with the accompanying memorandum, it is ORDERED that:

- 1. The Report and Recommendation is ADOPTED, as modified by the memorandum accompanying this order.
- 2. For the reasons given in the memorandum accompanying this order, Petitioner Luis Javier Mendoza-Ordonez's objections (Doc. 25) to the Report and Recommendation are SUSTAINED, and Respondents' objections (Doc. 23) to the Report and Recommendation are OVERRULED.
- 3. The petition for a writ of habeas corpus (Doc. 1) is GRANTED as is consistent with the memorandum accompanying this order.¹
- 4. Within twenty-one (21) days of this order, an immigration judge shall afford Mendoza an individualized bond hearing. At this hearing, the immigration judge must make an individualized inquiry into whether detention is still necessary for the purposes of ensuring that Mendoza attends his

¹ We recognize that among the relief requested by Petitioner in the Petition for Writ of Habeas Corpus is any counsel fees and costs that may be appropriate, as is consistent with the Equal Access to Justice Act, 28 U.S.C. § 2412. (See Doc. 1 at 21). The court will reserve decision on this requested relief until after Petitioner's bond hearing, at which time the issue may be further briefed by the parties to Magistrate Judge Mehalchick.

withholding of removal proceedings and that his release will not pose a danger to the community. See Chavez- Alvarez v. Warden York Cty. Prison, 783 F.3d 469, 475 (3d Cir. 2015). Further, the government bears the burden of proving by clear and convincing evidence at this hearing that Mendoza's continued detention is necessary to fulfill the purposes of the detention statute. See Diop v. ICE/Homeland Sec., 656 F.3d 221, 233 (3d Cir. 2011); see also Guerrero Sanchez v. Sabol, No. 1:15-CV-2423, 2017 WL 569176, at *2 (M.D. Pa. Feb. 13, 2017) (Caldwell, J.).

- 5. The parties shall report to this court on the outcome of the individualized bond determination no later than three (3) days after the immigration judge's hearing and decision.
- 6. If the immigration judge does not hold an individualized bond hearing consistent with the legal benchmarks outlined in the memorandum accompanying this order and in the Report and Recommendation, this court retains jurisdiction and may consider conducting its own bond determination under the standards governing bail in habeas corpus proceedings, at a date and location to be determined.

/s/ William W. Caldwell
William W. Caldwell
United States District Judge